

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**BRANDEIS UNIVERSITY and
GFA BRANDS, INC.,**

Plaintiffs,

v.

**KEEBLER CO.,
FAMOUS AMOS CHOCOLATE CHIP
COOKIE COMPANY, LLC, and
MURRAY BISCUIT CO. LLC,**

Defendants.

Civil Action No. 1:12-cv-1509

Judge Richard A. Posner

Consolidated under No. 1:12:cv-1508

**NON-FINAL JUDGMENT OF NON-INFRINGEMENT OF CLAIMS 7, 8,
34 AND 42 OF U.S. PATENT NO. 5,843,497**

The Court, having considered the Joint Stipulation And Motion For Entry Of Non-Final Judgment Of Non-Infringement Of Claims 7, 8, 34, and 42 (“Asserted Claims”) of U.S. Patent No. 5,843,497 (the “’497 patent”) (Dkt. 341), hereby ORDERS as follows:

1. Based on the Joint Stipulation and the construction of the terms “polyunsaturated fat” and “saturated fat” as set forth in the Court’s order on claim construction dated August 24, 2012, the Court finds that the following products do not infringe claims 7, 8, 34 and 42 of the ’497 patent:

- Keebler Chips Deluxe Chocolate Lovers cookies made according to the formula described in the document labeled KLLG0000386, using the oil blend described in the document labeled BUN-KEL000002;
- Keebler Chips Deluxe Oatmeal Chocolate Chip Cookies made according to the formula described in the document labeled KLLG0000428, using the oil blend described in the document labeled BUN-KEL000002;

- Keebler Chips Deluxe Rainbow Cookies made according to the formula described in the document labeled KLLG0000461, using the oil blend described in the document labeled BUN-KEL000002;
- Famous Amos Chocolate Chip Cookies made according to the formula described in the document labeled KLLG0000520, using the oil blend described in the document labeled BUN-KEL000002;
- Murray Biscuit Sugar Free Chocolate Chip Cookies made according to the formula described in the document labeled KLLG0000547, using the oil blend described in the document labeled BUN-KEL000002; and
- Famous Amos Bite Size Chocolate Chip & Pecans Cookies made according to the formula described in the document labeled KLLG0000497, using the oil blend described in the document labeled BUN-KEL000002.

2. In light of the Joint Stipulation, entry of dismissal of all asserted claims under the '497 patent against Keebler Co. ("Keebler"), Famous Amos Chocolate Chip Cookie Company, LLC ("Famous Amos"), and Murray Biscuit Co. LLC ("Murray Biscuit") is appropriate. The Court does not decide the merits of any other defenses or any of the invalidity or unenforceability counterclaims that Keebler, Famous Amos, or Murray Biscuit has against the Asserted Claims in this case.

3. The Court hereby enters a non-final judgment of non-infringement of claims 7, 8, 34 and 42 of the '497 patent as to Keebler, Famous Amos and Murray Biscuit for the foregoing products. This non-final judgment shall have the same preclusive effect as entry of summary judgment of non-infringement. However, this non-final judgment shall be without prejudice to Plaintiffs' right to pursue the claims asserted against Keebler in the Second Amended Complaint (Dkt. 201 filed in Case No. 12-cv-1509). The judgment set forth herein shall be included in any final judgment in the consolidated case.

4. Each party shall bear its own costs as to the Asserted Claims.

SO ORDERED.



Hon. Richard A. Posner